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10/621,362	07/18/2003	Jasper Jan Wickerhoff	240625US6	2557
22850	7590	04/11/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SWIATEK, ROBERT P	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/621,362
Filing Date: July 18, 2003
Appellant(s): WICKERHOFF ET AL.

Mr. Gregory J. Maier
For Appellants

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6 June 2005 appealing from the Office action mailed
8 October 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

NEW GROUND(S) OF REJECTION

Claims 1-3, 7, 10, 11 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter appellants regard as the invention.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

3,604,661 MAYER Jr. 9-1971

43 34 164 A1 PASSLER (Fed. Rep. Of Germany) 3-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- 1) Rejection of claims 1, 2, 10/1, 10/2, 11/1, 11/2, 12, 14 under 35 USC 102(b) as being anticipated by Mayer Jr. (US 3,604,661).
- 2) Rejection of claims 1-3, 7, 10-12, 14 under 35 USC 102(b) as being anticipated by Passler (DE 43 34 164 A1).

NEW GROUND OF REJECTION:

Rejection of claims 1-3, 7, 10, 11 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter appellants regard as the invention. In claim 1, lines 2, 3, the phrase “, in particular during a landing stage of the aeroplane,” does not clearly set forth the metes and bounds of the patent protection desired and is deemed to constitute a range within a range.

(10) Response to Argument

Appellants devote much space in their appeal brief to enumerating the supposed deficiencies of the Mayer Jr. patent while elaborating little upon the wide scope of instant claims 1, 12, and 14. Claim 1, for example, recites a nozzle “for creating an air screen,” which air screen is configured to deflect air flow away from a front portion of the landing gear of an

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aircraft. The Mayer Jr. aircraft is shown to have a series of slots 22 arranged partially around a forward portion of the aircraft, with a lowermost slot on both the left and right sides of the aircraft directing a flow of air downwardly and tangentially relative to the fuselage. Inasmuch as the landing gear of the Mayer Jr. aircraft would extend downwardly below the fuselage and not the wings (note the wing cross-section of Figure 2 of Mayer Jr., which lacks any depiction of landing gear), it is considered that air emanating from the lowermost slots 22 would deflect at least a miniscule amount (if not more) of the oncoming air in the slipstream downwardly from the landing gear as the aircraft swept in for a landing. In effect, the slots would form an air screen deflecting the air and reducing some noise that would otherwise be produced by the landing gear in the absence of the slots. Would a large volume of air be deflected by the slots? Would sound be dramatically reduced? Probably no to both questions; however, claim 1 does not quantify the amount of air deflection or noise reduction achieved--only that *some* air is deflected, with a consequent reduction in noise. In other words, this phraseology encompasses a situation where but a tiny amount of air is entrained by the airflow from the slots and a tiny amount of noise reduction occurs.

Moreover, the instant claims state that air is screened from only "a front side of a portion" of the landing gear, claim language that is met if literally a few molecules of air are shoved to one side by the air emerging from the slots of Mayer Jr. Contrary to appellants' analysis in the brief, precisely *where* on the fuselage the landing gear of Mayer Jr. is located is irrelevant for the purposes of the air deflection. If the landing gear were to the rear of the leading edges of the wings, oncoming air forced downwardly (diverted) by the tangential air flow from the lowermost slots 22 of Mayer Jr. would continue angularly down and miss the outstretched

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landing gear. Again, the claim language is satisfied if only the tiniest amount of slipstream air is deflected—the claims are silent regarding precise percentages or percentage ranges. As to claim 11, the curvature of the leading portion of the Mayer Jr. fuselage is considered to function as a secondary “deflection element.” The lower circumference of this tapered nose portion would deflect some air angularly downwardly, causing it to bypass the landing gear when it was extended. Claim 11 does not in any way specify a relationship between the deflection element and the “blowing unit” of claim 1.

The situation with respect to the Passler reference and the instant claims is believed far more straightforward. Clearly depicted is a blowing unit 1 situated in front of the landing gear of an aircraft, which landing gear includes the aircraft tires as well as the associated struts, legs, and shock absorber. The blowing unit or nozzle 1 emits high-pressure air from the turbine compressor for the purpose of blowing water from the runway in front of the moving aircraft. As seen in Figure 2 of Passler, the nozzle 1 blows air outwardly and downwardly from its forward position relative to the landing gear, a position appellants acknowledge is “just above the ground and in front of the tires” (page 9, line 9, of the brief). While the Passler reference makes no reference to an air screen or landing gear sound reduction, without a doubt air emerging from the nozzle 1 would form a screen deflecting and entraining *some* oncoming air from the tires, subsequently reducing—however slightly—sound produced by the elements of the landing gear. The language of claim 11 drawn to an additional deflecting element used in conjunction with the blowing unit of claim 1 is met by the air hose 2 of Passler, whose lower extent would deflect a modicum of air from the shock absorber 5 and the axle connecting the tires.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent

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applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.


Respectfully submitted,




Robert P. Swiatek
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A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Conferees:

PMP 

JWK 



PETER M. POON
SUPERVISORY PATENT EXAMINER